

COPY
JUN 15 2006

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SACRAMENTO, CA 95814
Phone 916-445-4926 FAX 916-323-6439
Jaime Rene Roman, Presiding Judge

1515 CLAY STREET, SUITE 206
OAKLAND, CA 94612
Phone 510-622-2722 FAX 510-622-2743
Melissa G Crowell, Presiding Judge

320 WEST FOURTH STREET, ROOM 630
LOS ANGELES, CA 90013
Phone 213-576-7200 FAX 213-576-7244
Janis S Rovner, Presiding Judge

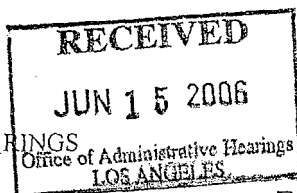
1350 FRONT STREET, ROOM 6022
SAN DIEGO, CA 92101
Phone 619-525-4475 FAX 619-525-4419
Steven V Adler, Presiding Judge

DATE: 6/15/2006

TO: OFFICE OF ADMINISTRATIVE HEARINGS

FROM:

Thomas G Heller, Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013



(PLEASE TYPE AND SUBMIT IN TRIPLICATE)

STATE AGENCY REQUEST TO SET (Cal. Code Regs., tit. 1, § 1018)

CASE TITLE <i>In the Matter of Bill Vladimir Gomelsky and American Earth Management, Inc., dba American Oil Company</i>		DAH CASE NO
NAME OF AGENCY <i>Department of Toxic Substances Control</i>		AGENCY CASE NO <i>HWCA 20040529</i>
AGENCY ATTORNEY/REPRESENTATIVE Name, Address, Telephone and Facsimile Nos <i>Thomas G. Heller, Deputy Attorney General California Department of Justice 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 213 897-2628 213 897-2802 (facsimile) thomas.heller@doj.ca.gov</i>	RESPONDENT/APPELLANT/PETITIONER Name, Address, Telephone and Facsimile Nos <i>American Earth Management, Inc., dba American Oil Company, and Bill Vladimir Gomelsky 13740 Saicoy Street Van Nuys, CA 91402 818 700-8297 818 689-9268 (facsimile)</i>	RESPONDENT ATTORNEY/REPRESENTATIVE Name, Address, Telephone and Facsimile Nos <i>Steven Sadowsky, Esq. Lightfoot, Vandeveld, Sadowsky & Levine 655 South Hope Street, Thirteenth Floor Los Angeles, CA 90017 213 622-4750 213 622-2690 (facsimile) ssadowsky@lvslaw.com</i>
<input type="checkbox"/> ACCUSATION <input type="checkbox"/> STATEMENT OF ISSUES <input checked="" type="checkbox"/> OTHER (LIST) First Amended Enforcement Order (Ex. 1). See also Enforcement Order (Ex. 2. and Notice of Defense (Ex. 31		
STATUTORY TIME LIMIT <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES	IF YES, PROVIDE LEGAL AUTHORITY <i>Health & Saf. Code, s 25187, subd. (e)</i>	IF YES, DATE BY WHICH CASE MUST BE HEARD <i>9/13/06 (90 days after OAH receipt of Notice of Defense)</i>
TIME ESTIMATE FOR HEARING	<input type="checkbox"/> TAPE RECORDED HEARING BY CONSENT (Gov. Code, § 11512, subd. (d)) <input checked="" type="checkbox"/> OAH TO REQUEST CSR <input type="checkbox"/> AGENCY TO PROVIDE CSR	
HOURS	DAYS <i>4</i>	PLACE OF HEARING <i>Los Angeles</i>
DATES PREFERRED <i>9/5/06-9/8/06</i>		DATES AVAILABLE <i>For Agency: All dates not listed in the following column.</i>
DATES UNAVAILABLE FOR THE NEXT SIX MONTHS <i>For Agency: 7/17, 7/28, 8/7-8/18, 9/12 (a.m. only) For Respondent: 6/15-7/13; other dates not presently known to Agency counsel</i>		
DATES COORDINATED WITH ALL PARTIES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
ADDITIONAL COMMENTS AND/OR INSTRUCTIONS, REQUEST FOR ACCOMMODATION <i>Agency counsel requests a telephonic trial setting conference</i>		
<input type="checkbox"/> SECURITY REQUESTED (ATTACH WRITTEN REQUEST)		
REQUEST TO SET ACKNOWLEDGEMENT		
DATE(S) SET/STARTING TIME	PLACE OF HEARING	DATE BY



01

Exhibit 1

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Bill Vladimir Gomelsky, and
American Earth Management, Inc.
d.b.a. American Oil Company
13740 Saticoy St.
Van Nuys, CA 91402

EPA ID No. CAD 981427669

Respondents

Docket HWCA 20040529

FIRST AMENDED ENFORCEMENT
ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this First Amended Enforcement Order (Order) to Bill Vladimir Gomelsky and American Earth Management, Inc., d.b.a. American Oil Company (Respondents).

1.2. Site. At all times relevant to this Order, Respondents transported hazardous waste and operated their business out of 13740 Saticoy St., Van Nuys, CA 91402.

1.3. Permit/Interim Status. At all times relevant to this Order, the Department authorized Respondents to manage hazardous waste by hazardous waste transporter registration number 1601, which was issued on or about April 10, 1987.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. The Respondents violated Health and Safety Code section 25189.2, subdivision (a), in that on the following occasions, Respondents made false statements on manifests.

2.1.a. Manifest #20842252, dated September 26, 2001 (Northridge Laboratories), falsely states that the waste is non-flammable (waste code 221, *in* a tanker truck).

2.1.b. Manifest #20071563, dated July 24, 2000 (Lakeside Boat Services), falsely states that the waste is non-flammable (waste code 221).

2.1.c. Manifest #20071571, dated July 24, 2000 (Paul Thorsen), falsely states that the waste is non-flammable (waste code 221, *in* a tanker truck).

2.2. The Respondents violated California Code of Regulations, title 22, section 66263.23, subsection (b), in that on the following occasions, Respondents delivered used oil mixed with contaminated petroleum products and/or waste solvents to a hazardous waste facility which is not authorized by the Department to receive the waste.

2.2.a. Manifest #20842252, dated September 26, 2001 (Northridge Laboratories), shows that the waste (ignitable, solvents) was taken to a facility that is not authorized to receive such waste.

2.2.b. Manifest #20071563, dated July 24, 2000 (Lakeside Boat Services), shows that the waste (gasoline) was taken to a facility that is not authorized to receive such waste.

2.2.c. Manifest #20071571, dated July 24, 2000 (Paul Thorsen), shows that the waste (ignitable, fuel) was taken to a facility that is not authorized to receive such waste.

2.3. The Respondents violated Health and Safety Code section 25250.7, subdivision (a), in that on four separate occasions between July 24, 2000 and November 8, 2001, Respondents intentionally contaminated used oil with other hazardous waste.

2.3.a. Manifest #20842252, dated September 26, 2001 (Northridge Laboratories), shows that Respondents picked up solvents, a hazardous waste, from the generator and delivered used oil contaminated with solvents to the TSDF.

2.3.b Manifest #20071563, dated July 24 ,2000 (Lakeside Boat Services), shows that Respondents picked up flammable gasoline, a hazardous waste, from the generator and delivered used oil contaminated with flammable gasoline, to the TSDF.

2.3.c. Manifest #20071571, dated July 24 ,2000 (Paul Thorsen), shows that Respondents picked up flammable fuel, a hazardous waste, from the generator and delivered used oil contaminated with flammable fuel, to the TSDF.

2.4. The Respondents violated Health and Safety Code section 25201, subdivision (a) in that between November 3, 2001 and December 28 ,2001 , Respondents stored hazardous waste in excess of the ten days allowed under the transfer facility exemption (California Code of Regulations, title 22, section 66263 .B) without a permit or other grant of authorization from the Department. This involved the following manifests: #20833690, 20833700, 20833748, 20833746, 20833855, and 20833907.

2.5. The Respondents violated Health and Safety Code section 25201, subdivision (a), in that on at least the following occasions, Respondents handled hazardous waste by transferring it from drums to a tanker truck, without a permit or other grant of authorization from the Department.

- 2.5.a. Manifest #20842252, dated September 26, 2001 (Northridge Laboratories), shows that the hazardous waste was picked up in a drum and delivered to the TSDf in a tanker truck.
- 2.5.b. Manifest #20071563, dated July 24, 2000 (Lakeside Boat Services), shows that the hazardous waste was picked up in a drum and delivered to the TSDf in a tanker truck.
- 2.5.c. Manifest #20071571, dated July 24, 2000 (Paul Thorsen), shows that the hazardous waste was picked up in a drum and delivered to the TSDf in a tanker truck.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1.1. Effective immediately, Respondents shall not make false statements on any manifest.

3.1.2. Effective immediately, Respondents shall only deliver hazardous waste to a facility authorized to accept such waste.

3.1.3. Effective immediately, Respondents shall not intentionally contaminate used oil with other hazardous waste.

3.1.4. Effective immediately, Respondents shall not store hazardous waste, in excess of the ten days allowed under the transfer facility exemption (California Code of Regulation, title 22, section 66263.18), unless the Respondents first apply and obtain the proper permit from the Department.

3.1.5. Effective immediately, Respondents shall not handle hazardous waste by transferring it from drums to a tanker truck, unless the Respondents first apply and obtain the proper permit from the Department.

3.2. Submittals. All submittals from the Respondents pursuant to this Order shall be sent to:

Mary Locke, Chief Criminal Investigator
Criminal Investigations Branch
Department of Toxic Substances Control
1001 I Street, 23rd Floor
P.O. Box 806
Sacramento, CA 95812-0806

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondents in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety *or* the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondents to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents. Notwithstanding compliance with the terms of this Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry

or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondents in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Order. Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondents pursuant to this Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least ~~six~~ months prior to destroying any documents prepared pursuant to this Order.

3.10. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Order are incorporated in this Order upon approval by the Department.

3.11. Extension Request: If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondents to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondents, their successors, and their assigns.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondents' penalty at \$17,900.00. Payment is due within 30 days from the effective date of the Order. Respondents' check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondents and Docket Number, as shown in the heading of this case. Respondents shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 J Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mary Locke, Chief Criminal Investigator
Criminal Investigations Branch
Department of Toxic Substances Control
1001 J Street, 23rd Floor
P.O. Box 806
Sacramento, CA 95812-0806

RIGHT TO A HEARING

6. Respondents have a right to a hearing to challenge the Order. Respondents have submitted a Notice of Defense to the Department in response to the original Enforcement Order issued on March 4, 2005. Because this Order amends the

March 4, 2005 Order, the Notice of Defense for the March 4, 2005 Order will constitute a Notice of Defense for this Order. A hearing shall be set for this Order.

Date of Issuance 6-1-06

Mary LOCKE
Chief Criminal Investigator
Department of Toxic Substances Control

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re Bill Vladimir Gomelsky, and American Earth Management, Inc. et al.**
No.: **HWCA 20040529**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On June 7, 2006, I served the attached **FIRST AMENDMENT ENFORCEMENT ORDER [Wealth and Safety Code]** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

**Steven Sadowsky, Esq.
Lightfoot, Vandeveld, Sadowsky & Levine
655 South Hope Street
Thirteenth Floor
Los Angeles, CA 90017-3211**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 7, 2006, at Los Angeles, California.

Carol Chow
Declarant

Exhibit 2

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Bill Vladimir Gomelsky, and
American Earth Management,
Inc.
d.b.a. American Oil Company
13740 Saticoy St.
Van Nuys, CA 91402
EPA ID No. CAD 981427669

Respondents

Docket HWCA 20040529

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to American Earth Management, Inc., d.b.a. American Oil Company, Bill Vladimir Gomelsky, its President (Respondents).

1.2. Site. Respondents transport hazardous waste and operate their business out of 13740 Saticoy St., Van Nuys, CA 91402.

1.3. Permit/Interim Status. The Department authorized Respondent, American Oil Company, to transport hazardous waste by hazardous waste transporter registration number 1601, which was issued on or about April 10, 1987 and expires on May 31, 2005.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary

to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. The Respondents violated Health and Safety Code section 25189.2, subdivision (a), in that on five separate occasions between July 24, 2000, and November 8, 2001, Respondents made false statements on five different manifests by misrepresenting the waste description, waste code, or container.

2.1.a. Manifest #20842252, dated September 26, 2001, falsely states that the waste is non-flammable (waste code 221, in a tanker truck).

2.1.b. Manifest #20074926, dated September 21, 2001, falsely states that the waste is non-flammable (waste code 291).

2.1.c. Manifest #20071563, dated July 24, 2000, falsely states that the waste is non-flammable (waste code 221, in a tanker truck).

2.1.d. Manifest #20071571, dated July 24, 2000, falsely states that the waste is non-flammable (waste code 221, in a tanker truck).

2.1.e. Manifest #20833738, dated November 8, 2001, falsely states that the waste was oil and water (in a tanker truck).

2.2. The Respondents violated California Code of Regulations, title 22, section 66263.23, subsection (b), in that on five separate occasions between June 28, 2000 and October 15, 2001, Respondents delivered used oil mixed with contaminated petroleum products and/or waste solvents to a hazardous waste facility that is not authorized by the Department to receive the waste.

2.2.a. Manifest #20842252, dated September 26, 2001, shows that the waste (ignitable, solvents) was taken to a facility that is not authorized to receive such waste.

2.2.b. Manifest #20071563, dated July 24, 2000, shows that the waste (gasoline) was taken to a facility that is not authorized to receive such waste.

2.2.c. Manifest #20071295, dated June 28, 2000, shows that the waste (stoddard solvent, waste code 213) was taken to a facility that is not authorized to receive such waste.

2.2.d. Manifest #20071571, dated July 24, 2000, shows that the waste (ignitable, fuel) was taken to a facility that is not authorized to receive such waste.

2.2.e. Manifest #20842346, dated October 15, 2001, shows that the waste (gasoline, per the receipt) was taken (on a consolidated manifest) to a facility that is not authorized to receive such waste.

2.3. The Respondents violated Health and Safety Code section 25189.2, subdivision (c), in that on two separate occasions between September 11, 2000 and September 28, 2001, Respondents caused the disposal or disposed of two separate drums of non-RCRA hazardous waste at a point which is not authorized.

2.3.a. Waste transported under Manifest #20074927, dated September 11, 2000, was not disposed of at D/K Environmental, as the manifest represents.

2.3.b. Waste transported under Manifest #20842341, dated September 28, 2001, was not disposed of at Industrial Service Oil Co., Inc., as the manifest represents.

2.4. The Respondents violated Health and Safety Code section 25250.7, subdivision (a), in that on four separate occasions between July 24, 2000 and November 8, 2001, Respondents intentionally contaminated used oil with other hazardous waste.

2.4.a. Manifest #20842252, dated September 26, 2001, shows that Respondents picked up solvents, a hazardous waste, from the generator and delivered used oil contaminated with solvents to the TSDF.

2.4.b. Manifest #20071563, dated July 24, 2000, shows that Respondents picked up flammable gasoline, a hazardous waste, from the generator and delivered used oil contaminated with flammable gasoline, to the TSDF.

2.4.c. Manifest #20071571, dated July 24, 2000, shows that Respondents picked up flammable fuel, a hazardous waste, from the generator and delivered used oil contaminated with flammable fuel, to the TSDF.

2.4.d. Manifest #20833738, dated November 8, 2001, shows that Respondents picked up water with pyrotechnics, from the generator as a hazardous waste and

delivered used oil contaminated with
water with pyrotechnics, to the TSDF.

2.5. The Respondents violated California Code of Regulations, title 22, section 66263.21, subsection (a)(1), in that on or about September 21, 2001, Respondents failed to deliver the entire quantity of hazardous waste that they picked up to the designated facility listed on the manifest. Manifest #20074926, dated September 21, 2000, shows that 150 gallons of hazardous waste was picked up and 100 gallons was delivered to the TSDF.

2.6. The Respondents, violated Health and Safety Code section 25201, subdivision (a) in that between November 3, 2001 and December 28, 2001, Respondents stored hazardous waste in excess of the ten days allowed under the transfer facility exemption (California Code of Regulations, title 22, section 66263.18) without a permit or other grant of authorization from the Department. This involved the following manifests: #20833690, 20833700, 20833748, 20833746, 20833855, and 20833907.

2.7. The Respondents violated Health and Safety Code section 25201, subdivision (a) in that on four separate occasions between July 24, 2000 and November 8, 2001, Respondents stored hazardous waste, without a permit or other grant of authorization from the Department, and did not qualify for the ten day transfer facility exception by virtue of Respondents' handling of the waste.

- 2.7.a. Manifest #20842252, dated September 26, 2001, shows that the hazardous waste was picked up in a drum and delivered to the TSDF in a tanker truck.
- 2.7.b. Manifest #20071563, dated July 24, 2000, shows that the hazardous waste was picked up in a drum and delivered to the TSDF in a tanker truck.
- 2.7.c. Manifest #20071571, dated July 24, 2000, shows that the hazardous waste was picked up in a drum and delivered to the TSDF in a tanker truck.
- 2.7.d. Manifest #20833738, dated November 8, 2001. The hazardous waste was picked up in a pick up truck. The manifest shows that it was delivered to the TSDF in a tanker truck.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations,
IT IS HEREBY ORDERED THAT:

3.1.1. Effective immediately, Respondents shall not make false statements on any manifest.

3.1.2. Effective immediately, Respondents shall only deliver hazardous waste to a facility authorized to accept such waste.

3.1.3. Effective immediately, Respondents shall not dispose or cause the disposal of hazardous waste at a point which is not authorized.

3.1.4. Effective immediately, Respondents shall not intentionally contaminate used oil with other hazardous waste.

3.1.5. Effective immediately, Respondents shall deliver the entire quantity of hazardous waste to the designated facility.

3.1.6. Effective immediately, Respondents shall not store hazardous waste, in excess of the ten days allowed under the transfer facility exemption (California Code of Regulation, title 22, section 66263.18), unless the Respondents first apply and obtain the proper permit from the Department.

3.1.7. Effective immediately, Respondents shall not handle hazardous waste by transferring it from drums to a tanker truck, unless the Respondents first apply and obtain the proper permit from the Department.

3.2. Submittals. All submittals from the Respondents pursuant to this Order shall be sent to:

Mary Locke, Chief Criminal Investigator
Criminal Investigations Branch
Department of Toxic Substances Control
1001 I Street, 23rd Floor

P.O. Box 806

Sacramento, CA 95812-0806

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondents in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. Return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondents to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents. Notwithstanding compliance with the terms of this Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site;

reviewing the progress of Respondents in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Order. Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondents pursuant to this Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or

property resulting from acts or omissions by Respondents or related parties in carrying out activities pursuant to this order, nor shall the State of California be held as a party to any contract entered into by Respondents or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. Extension Request: If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondents to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of

such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondents, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondents' penalty at \$204,900.00. Payment is due within 30 days from the effective date of the Order. Respondents' check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondents and Docket Number, as shown in the heading of this case. Respondents shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mary Locke, Chief Criminal Investigator
Criminal Investigations Branch
Department of Toxic Substances Control
1001 I Street, 23rd Floor
P.O. Box 806

Sacramento, CA 95812-0806

RIGHT TO A HEARING


6. Respondents may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondents.

EFFECTIVE DATE

7. This Order is final and effective fifteen days from the date of service, which is the date the Order was served upon the Respondents, unless Respondents request a hearing within the fifteen-day period.

Date of Issuance

March 4, 2005

A handwritten signature in black ink, appearing to read "Mary Locke", is written over a horizontal line.

Mary Locke
Chief Investigator
Department of Toxic Substances Control

Exhibit 3

STEPHEN B. SADOWSKY (STATE BAR NO. 90362)
LIGHTFOOT, VANDEVELDE, SADOWSKY
MEDVENE & LEVINE
555 SOUTH HOPE STREET, 13TH FLOOR
LOS ANGELES, CALIFORNIA 90017-3211
PHONE: (213) 622-4750
FAX: (213) 622-2690

Attorneys for Respondents
Bill Gomelsky and American
Earth Management, Inc. dba American Oil Company

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

In the Matter of:)	Docket HWCA 20040529
Bill Vladimir Gomelsky, and)	
American Earth Management, Inc.)	NOTICE OF DEFENSE
d.b.a. American Oil Company)	
13740 Saticoy Street)	Health and Safety Code Section
Van Nuys, CA 91402)	25187(d)
EPA ID NO. CAD 981427669,)	
)	
Respondents.)	
)	
)	

Respondents, through their undersigned counsel, acknowledge receipt of an Enforcement Order, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and a form entitled, Notice of Defense.

Further, respondents through counsel, hereby give notice that the allegations of the Enforcement Order are denied in their entirety and a hearing is requested to contest the charges and the proposed penalty and, in addition, to present evidence with respect to the following special defenses:

1 1. The Enforcement Order and its proposed penalty are barred by the
2 double jeopardy clauses of the California and U.S. Constitutions and by section
3 654(a) of the California Penal Code. The matters alleged in the Enforcement
4 Order were included within the prosecution and resolution of *People v American*
5 *Earth Management, Inc dba American Oil Co., Bill V. Gomelsky, etc., Case No.*
6 *2 CR 02917*, which was filed on June 14, 2002 and resolved on January 22, 2003
7 in Division 82 of the Superior Court of California for the County of Los Angeles.

8 2. The Enforcement Order and its proposed penalty are barred on
9 account of enforceable promises made by and on behalf of the People of the State
10 of California in the course of the prosecution and resolution of Case No. 2 CR
11 02917, referenced above. While Case No. 2 CR 02917 was pending, agents of
12 the Department of Toxic Substances Control ("DTSC") requested that the
13 prosecutor in that case, Assistant City Attorney Vince Sato, file additional
14 criminal charges against Mr. Gomelsky and American Earth Management, Inc.
15 dba American Oil Company, the defendants in Case No. 2 CR 02917 and the
16 respondents herein, arising from allegations which included those that are made
17 in the Enforcement Order. Assistant City Attorney Sato, acting on behalf of the
18 People of the State of California, promised not to file additional criminal charges
19 and not to seek additional penalties, as had been requested by DTSC, on the
20 conditions that pleas of no contest to all charges in Case No. 2 CR 02917 be
21 entered, that the defendants in Case No. 2 CR 02917 enter into a "*Harvey*
22 *waiver*," and that the defendants in Case No. 2 CR 02917 devise and implement a
23 hazardous waste manifest compliance policy acceptable to the People of the State
24 of California (including DTSC). The defendants in Case No. 2 CR 02917
25 complied fully with their part of the Agreement. The promises by the People - -
26 not to file additional criminal charges and not to seek additional penalties - -
27 therefore are enforceable.

28 3. The Enforcement Order and its proposed penalty, as well as the

1 statute purportedly authorizing them, Health and Safety Code § 25187, are
2 unconstitutional, and therefore void and unenforceable. The due process clauses
3 and separation of powers doctrines, among other provisions, of the California and
4 U.S. Constitutions prohibit the same party, whether an administrative agency or
5 otherwise, from: (1) initially proposing the propriety and amount of a penalty on
6 account of alleged violations of the law; (2) thereafter prosecuting the
7 proceedings to determine the propriety and amount of a penalty on account of
8 alleged violations of the law; (3) thereafter, whether an administrative hearing is
9 conducted or not, making a final adjudication as to the propriety and amount of a
10 penalty on account of alleged violations of the law; and (4) thereafter collecting
11 and depositing the monies paid or collected on account of alleged violations of
12 the law into a bank account controlled by, and for the use of, that same party.

13 4. The Enforcement Order and its proposed penalty are barred by the
14 doctrine of laches in that the DTSC has delayed unreasonably in bringing this
15 Enforcement Order and said delay has prejudiced the respondents in regard to the
16 preparation and presentation of their defenses. *See Brown v. California State*
17 *Personnel Board*, 166 Cal. App. 3d 1151 (1985) and *Fountain Valley Regional*
18 *Hospital and Medical Center v. Bonta*, 75 Cal. App. 4th 316 (1999).


19 5. The proposed penalty is excessive, arbitrary, capricious, and without
20 rational basis in fact or law; and, as such, the proposed penalty is void and
21 unenforceable in that it violates the excessive fines and due process clauses of the
22 California and U.S. Constitutions.

23 6. The Enforcement Order, in whole or in part, is based on and derived
24 from the fruits of unlawful and unconstitutional searches of, and seizures at,
25 Respondent American Oil Company's business premises and Respondent
26 Gomelsky's residence, automobiles, and person on or about March 20, 2003,
27 pursuant to a patently unlawful search warrant, search warrant number unknown,
28 issued on March 18, 2003, at 2:00 p.m., by Magistrate Leslie V. Dunn. The

1 search warrant in question is facially overbroad and utterly lacking in
2 particularity, and it thereby improperly authorized the conduct of a general search
3 in violation of well-established constitutional principles. Furthermore, the
4 issuance of the search warrant was not supported by probable cause and the
5 affidavit on which it was based contained intentional misstatements and
6 falsifications of material facts and intentionally omitted other material facts. The
7 search warrant and its supporting affidavit were so deficient that no reasonable
8 law enforcement officer could reasonably rely on a magistrate's approval of the
9 warrant's issuance. The search warrant in question was sought by the DTSC and
10 was based on an affidavit prepared, and sworn to by DTSC personnel; and the
11 searches and seizures executed pursuant to the search warrant in question were
12 executed by DTSC personnel. As such, the search and seizure provisions of the
13 California and U.S. Constitutions prohibit the DTSC from using any evidence
14 obtained as a result of the execution of the search warrant, or any evidence
15 derived therefrom, in connection with the Enforcement Order or otherwise.

16
17 Dated: April 19, 2005

LIGHTFOOT, VANDEVELDE, SADOWSKY
MEDVENE & LEVINE
STEPHEN B. SADOWSKY

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21 By:  STEPHEN B. SADOWSKY
22 Attorneys for Respondents
23 Bill Vladimir Gomelsky and
24 American Earth Management, Inc. dba
25 American Oil Company
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re Bill Vladimir Gomelsky, and American Earth Management, Inc. et al.**
No.: **HWCA 20040529**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On June 15, 2006, I served the attached **STATE AGENCY REQUEST TO SET (Cal. Code Regs., tit. 1 §1018)** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Steven Sadowsky, Esq.
Lightfoot, Vandavelde, Sadowsky & Levine
655 South Hope Street
Thirteenth Floor
Los Angeles, CA 90017-3211

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 15, 2006, at Los Angeles, California.

Carol Chow
Declarant